IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.1207 of 2005

Date of decision 23.8.2007

State of H.P. and others Petitioners

Vs.

Nagar Chand and another Respondents

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Petitioners: Mr. M.S.Chandel, Advocate General with Mr.M.A.Khan and Ms.Meenakshi Sharma, Dy.Advocate Generals.

For the Respondents : Mr.Tarlok Chauhan, Advocate, for Respondent No.1.

Rajiv Sharma,J.

A challenge has been laid by the petitioner-State against the award passed by learned, Presiding Judge, H.P. Labour Court-cum-Industrial Tribunal, Dharamshala on 23.3.2005.

The brief facts necessary for the adjudication of this petition are that the State Government had made the following reference to the Labour Court-cum-Industrial Tribunal, Dharamshala:-

> "Whether the termination of the petitioner by the respondent as daily waged worker, without issuing notice, charge sheet, inquiry or compensation is legal and justified, if not to what service benefits the petitioner is entitled to?"

In sequel to the reference made by the State Government the workman had filed his statement of claim to which the reply was also filed

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

by the employer. The respondent No.1, here in after referred to as the workman for convenience sake, had primarily contended before the Labour Court that he was engaged in the year 1985 and had worked up to the month of May, 1993 and was retrenched without following the mandatory provisions of Section 25-G and H of the Industrial Disputes Act, 1947.The workman had also given the names of the persons who were engaged after his retrenchment. The principal stand of the State-employer before the Labour Court was that the workman had not completed 240 days at the time of his retrenchment preceding 12 calendar months and the provisions of Section 25-(G) and (H) of the Industrial Disputes Act, 1947 could not be invoked by the workman before the Labour Court. The Labour Court on the basis of the pleadings of the parties and evidence led by them had answered the reference in affirmative by directing reinstatement of the workman with 50% of back wages along with consequential service benefits.

Mr.M.S.Chandel, learned Advocate General had assailed the award passed by the Labour Court dated 23.3.2005 on various counts. Firstly on the ground there was inordinate delay by the workman in seeking the reference to the Labour Court, secondly the workman had not completed 240 days at the time of his retrenchment preceding block of 12 calendar months, thirdly the workman was not entitled to the protection of Section 25-(G) and (H) of the Industrial Disputes Act, 1947 and lastly the workman could not be held entitled to 50% back wages by the Labour Court with consequential benefits.

I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

The workman was engaged in the year 1985 and had worked up to May, 1993. It appears that he had raised the demand to the employer in the year 1999 and thereafter on the failure of the conciliation proceedings

the reference was made by the State Government to the Labour Court, Dharamshala in the year 2001. The workman has to raise the dispute at the earliest but if there is delay in raising the dispute the Labour Court is competent to go into this aspect of the matter at the time of granting relief to the workman. The reference was made by the State Government in the year 2001 but the same was not assailed by the employer before the competent forum. If the employer was aggrieved by the reference made after delay the same was required to be challenged. Accordingly it is held that the reference though was made after the gap of six years but the Labour Court has taken this fact into consideration while moulding the relief by granting only 50 % back wages and the same cannot be faulted with.

The workman was engaged with effect from 1985 to 30.9.1993. The employer had filed the copy of man days chart along with this petition. If the man days is scrutinized minutely it is evident that if 240 days are counted preceding 30.9.1993 back ward in a block of 12 preceding months workman had completed more than 240 days. In fact the workman had completed more than 240 days. The workman thus could not be retrenched without following the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947.

The workman had appeared as PW-1 before the Labour Court and had categorically stated that workmen, namely, Gopal, Gokul and Jaikaran were engaged by the employer after his retrenchment in the year 1993. This fact has not been denied by Sh.M.R.Chauhan, Assistant Engineer, I&PH who appeared as RW-1. He had also admitted that no notice was issued to the workman at the time of effecting his retrenchment and the Department had not followed the principle of ‘last come first go’. He also admitted that no notice was issued to the workman for rejoining his duties before the joining of Gopal, Gokul and Jaikaran. Thus it is evident that

there was violation of Section 25-(G) and (H) of the Industrial Disputes Act, 1947 by the employer and the findings arrived at by the Labour Court to this effect are upheld. The employer had also failed to prove the plea of abandonment in accordance with law. There is nothing on record to suggest that the workman had abandoned his job. The workman had also filed CMP No.1831 of 2007 stating therein that he was not employed in any establishment after his illegal retrenchment. The Labour Court held on the basis of the evidence led before it that the workman was not gainfully employed after his retrenchment. Consequently the 50% back wages awarded to the workman is also upheld. Consequently there is no merit in the writ petition and the same is dismissed.

August 23,2007(g) **(Rajiv Sharma), J.**